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Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SATWINDER SINGH and
SURINDER SINGH,

Case No. 07-3472 JSW

Plaintiffs,

FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTION

vs.

EMILIO T. GONZALEZ,
Director, United States Citizenship
and Immigration Services,

Defendant

Plaintiffs allege:

1. This action is brought pursuant to the provisions of 28 U.S.C. § 1331 and 5 U.S.C. §§ 701 - 706.

2. Defendant is the Director of the United States Citizenship and Immigration Services, (USCIS), an agency of the United States as defined by 5 U.S.C. §701(b)(1), charged with the duty to administer and enforce the Immigration and Nationality Act.

8 U.S.C. §1154(a)(1)(A)(i) vests defendant with the authority to accord immediate relative status under 8 U.S.C. §1151(b)(2)(A)(i) to the alien child of a United States citizen. To accord immediate relative status a United States citizen is required to file a petition on a Form I-130 with the USCIS in accordance with the provisions of 8 C.F.R. §204.1.

1 8 U.S.C. §1255(a) and 8 U.S.C. §1159(b) vest defendant with discretion to adjust an alien's
2 status to that of an alien lawfully admitted for permanent residence. To apply for adjustment of status
3 an alien is required to file an application on a Form I-485 in accordance with the provisions of 8
4 C.F.R. §245.2.

5 3. Plaintiff Satwinder Singh, is a citizen of India who was admitted to the United States on
6 August 24, 1997 as an asylee based upon an approved asylee relative petition filed on plaintiff's
7 behalf by his father, plaintiff Surinder Singh. *See*, attached Exhibit A.

8 4. On November 8, 1998 plaintiff Satwinder Singh applied for adjustment of status pursuant
9 to 8 U.S.C. §1159(b) by filing an application with the USCIS in the manner prescribed in 8 C.F.R.
10 §209.2. *See*, Exhibit B.

11 5. On January 5, 2005 plaintiff Surinder Singh was admitted as a citizen of the United States.
12 *See*, Exhibit C.

13 6. On January 10, 2006 the USCIS informed plaintiff Satwinder Singh that he was no longer
14 eligible for adjustment of status as an asylee because his father was a United States citizen. *See*,
15 Exhibit D.

16 7. On January 17, 2006 plaintiff Surinder Singh petitioned defendant to accord immediate
17 relative status on plaintiff Satwinder Singh, and plaintiff Satwinder Singh simultaneously applied
18 for adjustment of status pursuant to 8 U.S.C. §1255(a). *See*, Exhibit E.

19 8. Defendant has not adjudicated plaintiffs' petition and application, and plaintiffs' petition
20 and application remain pending.

21 9. Defendant's failure to adjudicate plaintiffs' petition and application is unlawful, arbitrary
22 and capricious.

23 10. There is no administrative appeal from defendant's decision.

24 11. There is a real and actual controversy between the parties. Plaintiffs have no adequate
25 remedy at law. Plaintiffs have suffered and will continue to suffer irreparable injury as result of the
26 acts of the defendant complained herein.

1 WHEREFORE, plaintiff prays judgment.

2 1. Declaring that defendant has violated 8 U.S.C. §1154(a)(1)(A)(i) and 8 C.F.R. §204.1 in
3 his adjudication of plaintiff Surinder Singh's visa petition.

4 2. Declaring that defendant has violated 8 U.S.C. §1255(a) and 8 C.F.R. §§245.2 in his
5 adjudication of plaintiff Satwinder Singh's application for adjustment of status.

6 3. Preliminarily and permanently enjoining defendant, his agents, and delegates to
7 immediately adjudicate plaintiffs' visa petition and application forthwith.

8 3. Awarding plaintiffs their costs and reasonable attorneys fees incurred in this action.

9 4. Granting such other and further relief as may be appropriate.

10 Dated: July 11, 2007

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12 JONATHAN M. KAUFMAN
13 Attorney For Plaintiffs
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EXHIBIT A

Departure Number

140032063 06

Immigration and
Naturalization ServiceI-94
Departure Record

ADMITTED AS AN ASYLEE
PURSUANT TO SEC. 208(a)
OF THE I&N ACT. IF YOU
DEPART THE UNITED STATES
YOU WILL NEED PRIOR
PERMISSION FROM THE
U S IMMIGRATION SERVICE
TO RETURN
VALID: ~~SEP 2008~~ **AUG 24 1997**
VALID: INDEFINITELY

| | |
|--|--|
| 14. Family Name SINGH | |
| 15. First (Given) Name S.A.T.WINDER | 16. Birth Date (Day/Mo/Yr) 15.01.90 |
| 17. Country of Citizenship INDIA | |

WARNING: A nonimmigrant who accepts unauthorized employment is subject to deportation.

Important - Retain this permit in your possession; *you must surrender it when you leave the U.S.* Failure to do so may delay your entry into the U.S. in the future.

You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permission from immigration authorities, is a violation of the law.

- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 prior to surrendering this permit.

Record of Changes

A 75260419

Port:

Departure Record

Date:

Carrier:

Flight #/Ship Name:

EXHIBIT B

U.S. Department of Justice
Immigration and Naturalization Service

Notice of Action

UNITED STATES OF AMERICA

| | | |
|---|----------------|---|
| RECEIPT NUMBER LEN-99-019-50346 | | CASE TYPE I-485 APPLICATION TO ADJUST TO PERMANENT |
| RECEIVED DATE November 9, 1998 | PRIORITY DATE | RESIDENT STATUS APPLICANT A75 258 419 SINGH, SATWINDER |
| NOTICE DATE November 13, 1998 | PAGE 1 of 1 | |
| SATWINDER SINGH C/O SURINDER SINGH 4016 MINUET CIR RICHMOND CA 94803 | | Notice Type: Receipt Notice Amount received: \$ 150.00 |

The above application or petition has been received. It takes 209 to 238 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect. Our customer service phone number is listed below.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number below to obtain case status information direct from our automatic phone system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).



Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER
U. S. IMMIG. & NATZ. SERVICE
P. O. BOX 92521
LINCOLN NE 68501-2521
Customer Service Telephone: 402-437-5218



EXHIBIT C

UNITED STATES OF AMERICA

CITIZENSHIP



NATURALIZATION

No. 28545333

Personal description of holder
as of date of naturalization:

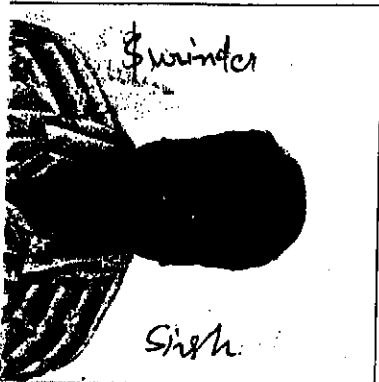
Date of birth: **JANUARY 01, 1960**

Sex: **MALE**

Height: **5** feet **8** inches

Marital status: **MARRIED**

Country of former nationality:
INDIA



CGS Registration No. **A073407120**
I certify that the description given is true, and that the photograph affixed
hereto is a likeness of me.

Surinder Singh
(Completes and true signature of holder)

Be it known that, pursuant to an application filed with the Secretary of
Homeland Security

at: **SAN FRANCISCO, CALIFORNIA**

The Secretary having found that:

SURINDER SINGH

then residing in the United States, intends to reside in the United States when so
required by the Naturalization laws of the United States, and had in all other
respects complied with the applicable provisions of such naturalization laws and
was entitled to be admitted to citizenship, such person having taken the oath of
allegiance in a ceremony conducted by the

US CITIZENSHIP AND IMMIGRATION SERVICES

at: **SAN FRANCISCO, CALIFORNIA**

on: **JANUARY 05, 2005**

that such person is admitted as a citizen of the United States of America.

IT IS PUNISHABLE BY U. S. LAW TO COPY,
PRINT OR PHOTOGRAPH THIS CERTIFICATE,
WITHOUT LAWFUL AUTHORITY.

Director, U. S. Citizenship and Immigration Services

Samuel J. Davis

DEPARTMENT OF HOMELAND SECURITY

EXHIBIT D

U.S. Department of Homeland Security
P.O. Box 82521
Lincoln, NE 68501-2521



U.S. Citizenship
and Immigration
Services

January 10, 2006

Refer to File Number: LIN9901950346



SATWINDER SINGH
C/O EC VILLAREAL
LIBERTY IMMIGRATION
727 WEBSTER ST
FAIRFIELD CA 94533

Dear Sir or Madam:

RE: Form: I485

Beneficiary: SINGH, SATWINDER

REQUEST FOR EVIDENCE

The documentation submitted is not sufficient to warrant favorable consideration of your petition/application.

See Attachment for Details

Your response must be received in this office by April 04, 2006.

Your case is being held in this office pending your response. Within this period you may:

1. Submit all of the evidence requested;
2. Submit some or none of the evidence requested and ask for a decision based upon the record; or
3. Withdraw the application or petition. (It is noted that if you request that the application or petition be withdrawn, the filing fee cannot be refunded).

You must submit all of the evidence at one time. Submission of only part of the evidence requested will be considered a request for a decision based upon the record. No extension of the period allowed to submit evidence will be granted. If the evidence submitted does not establish that your case was approvable at the time it was filed, it can be denied.

If you do not respond to this request within the time allowed, your case will be considered abandoned and denied. Evidence received in this office after the due date may not be considered.

PLACE THIS LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL. PLEASE USE THE ENCLOSED ENVELOPE TO MAIL ADDITIONAL EVIDENCE REQUEST BACK TO THIS OFFICE.

Sincerely,

Paul M. Pierre
Acting Director

NSC/paa EX094

Receipt Number: LIN9901950346

Attachment

Form I-485 must be accompanied by two passport-style natural color photos; therefore, please submit two (2) color photos of yourself, recently taken, and not previously used.

Digital photos or photos that are laser printed will be accepted; however, there must be no discernible pixels or dot patterns. Using a soft pencil or felt pen, print your name (and alien registration number, if known) on the back of each photograph. We suggest that you show these instructions to the photographer who takes the pictures.

For specific information on acceptable passport photos, please visit the Department of State's website at <http://travel.state.gov/passport/pptphotos/>.

Evidence of record indicates that you were granted asylum in the United States as a dependent child. Service records indicate that the principal asylee from whom you derived status is now a United States citizen and no longer meets the definition of a refugee. As a result you no longer qualify as the derivative spouse/child of a refugee/asylee. Therefore, at this time you are not eligible to adjust your status to permanent resident as a dependent. However, Service guidance allows derivative asylees who no longer qualify as a spouse or child to be processed for asylum in their own right, *nunc pro tunc* (now for then), meaning the new asylum grant is retroactive to the original grant of asylum.

In order to complete this process you must complete Form I-589, Application for Asylum, and return it to this office in the provided return envelope. You may go online to www.uscis.gov for information and to download forms. You may also order immigration forms by phone at 1(800)870-3676.

Processing of your application for permanent residence will continue when we receive the completed Form I-589.

Please provide proof of A number assignments.

You must submit all previously issued passports and visas issued by both the United States, Canada and all foreign governments. You must submit the original documents, photocopies will not be accepted.

You must submit a detailed list of all your previous travel to any foreign country since your grant of asylum. Please submit a detailed explanation of your activities in each country and city where you traveled or visited. You must submit all documentary evidence in your possession regarding your immigration status in all countries you visited. If you do not have any documentary evidence you must submit a sworn affidavit as to your residence and immigration status in that foreign country.

Please submit evidence issued to you by immigrations verifying the two A numbers you are claiming to have been issued to you. Service records indicate you're A number is A75258419 and recent correspondence from you indicated you're A number is A75260419.

EXHIBIT E

THE UNITED STATES OF AMERICA

| | | |
|-------------------------------------|----------------|--|
| Receipt Number: MSC-06-115-14210 | | Case Type: I-485 - Application to Register Permanent Residence or Adjust Status |
| Received Date: January 17, 2006 | Priority Date: | Applicant: A075258419 SINGH, SATWINDER |
| Notice Date: January 25, 2006 | Page 1 OF 1 | ASC Code: 3 |

| | |
|--|--|
| SATWINDER SINGH 4016 MINUET CIRCLE RICHMOND CA 94803 | Notice Type: Receipt Notice Amount Received: \$395.00 |
|--|--|

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-

The next step is to have your biometrics taken, if required, at a U.S. Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283



Department of Homeland Security
Citizenship and Immigration Services

I-797C, Notice of Action

THE UNITED STATES OF AMERICA

| | | | |
|--|----------------|--|--|
| Receipt Number: MSC-06-115-14213 | | Case Type: I-130 - Petition for Alien Relative | |
| Received Date: January 17, 2006 | Priority Date: | Petitioner: A073407120 SINGH, SURINDER | |
| Notice Date: January 25, 2006 | Page 1 OF 1 | Beneficiary: A075258419 SINGH, SATWINDER | |
| E VILLARREAL 727 WEBSTER ST FAIRFIELD CA 94533 | | Notice Type: Receipt Notice Amount Received: \$190.00 | |

The above application/petition has been received. Please notify us immediately if any of the above information is incorrect. Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

If you have questions, you may call the BCIS National Customer Service Center at 1-800-375-5283. For TDD hearing impaired assistance, please call 1-800-767-1833.

If you have Internet access, you can visit the Bureau of Citizenship and Immigration Services website at www.BCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES

P.O. Box 648005

Lee's Summit, MO 64064

National Customer Service Center: 1-800-375-5283



5136413

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Form I-797C (Rev. 11/22/03) N